

September 28, 1945

Mr. Edwin Beauchamp  
County Attorney  
Maricopa County  
Phoenix, Arizona

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

Attention: Ioretta C. Savage  
Deputy County Attorney

Dear Sir:

Under date of September 11, 1945, you requested our opinion based upon your letter which we quote below in part:

"In order that there be a uniform interpretation throughout the state of the provisions of Section 55-302, Arizona Code, 1939, governing the appointment of election boards for general and primary elections, the Board of Supervisors of this county have requested us to refer the following question to you for reply:

"Are precinct committeemen 'precinct officers' within the meaning of that part of Section 55-302, Arizona Code, 1939, which provides:

"No United States, state, county nor precinct officer, nor any candidate for office at such election shall be qualified to act as judge, inspector or clerk at an election",

and if so, are they disqualified from acting as members of election boards at an election?"

There are only two classes of precinct officers in Arizona--justices of the peace and constables. The only similarity existing between justices of the peace and constables on the one hand and precinct committeemen on the other is that they all are elected in their respective precincts. But the similarity ends there.

The elements necessary to constitute a public officer have been defined many times by our Supreme Court. A good definition is found in the case of State Consolidated Publishing

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Company v. Hill, 39 Ariz. 31. The court said:

"We think that in 22 Ruling Case Law, 381, Section 12, the chief elements of a 'public office' are well summed up. The specific position must be created by law; there must be certain definite duties imposed by law on the incumbent, and they must involve the exercise of some portion of the sovereign power. A position which has these three elements is presumably an 'office,' while one which lacks any of them is a mere 'employment.'"

Precinct officers, such as justices of the peace and constables, discharge some portion of the sovereign power, and for that reason they are public officers. Precinct committeemen, on the other hand, have no such power. Inasmuch as their election and their organization are regulated by law, in a sense, they are public officials. But their functions are non-juridical. Strictly speaking, they are officers of political parties only. "Political parties," according to the Supreme Court of Illinois in People v. Emerson, 165 N.E. 217, "are voluntary organizations with inherent power of self-government."

In view of the foregoing, we are of the opinion that precinct committeemen are not precinct officers and are therefore qualified to serve on election boards.

Very truly yours,

JOHN L. SULLIVAN  
Attorney General

HARRY O. JULIANI  
Chief Assistant  
Attorney General

HOJ:s

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